

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**KEITH DIEMER,**

**Defendant.**

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**No. CR 1:23-00033-001 KWR**

**ORDER DENYING APPEARANCE BY VIDEO AT PLEA HEARING**

THIS MATTER is before the Court on Defendant's Motion to Appear by Video at Plea Hearing (*Doc. 34*). Although the Motion is docketed as being unopposed, there is no representation within the Motion itself regarding the Government's position. Yet even if the parties consent to the use of videoconferencing of a felony change of plea hearing, this Court lacks authority to grant the requested relief.

Federal Rule of Criminal Procedure 43 requires the presence of a defendant at such a hearing. Rule 43 provides an exception, however, permitting the use of videoconferencing when taking a misdemeanor guilty plea with consent with the defendant's consent. But that it not the case here where a felony guilty plea is contemplated.

During the COVID pandemic, Congress passed the "Coronavirus Aid Relief, and Economic Security Act," H.R. 748 (the "Act"). The Act authorized Federal Courts to use video or telephone conferencing for certain criminal matters, provided: (a) each defendant consented to the use of such equipment, after consulting with counsel; and (b) the Judicial Conference made a finding that emergency conditions caused by COVID 19 would materially

affect the functioning of the Courts. The Judicial Conference made such an emergency declaration covering the District of New Mexico on March 29, 2020. The most recent Administrative Order pursuant to the Act authorizing the use of videoconferencing in felony plea proceedings (23-MC-00004-10) expired on June 14, 2023. Therefore, no matter how persuasive this Court might find the asserted reasons for allowing the requested relief in the circumstances presented in this case, no such relief is available. Thus, the Court finds the motion is not well-taken and should be denied.

IT IS SO ORDERED.

  
UNITED STATES MAGISTRATE JUDGE